DISTRICT COURT OF APPEAL OF FLORIDA, FOURTH DISTRICT

GMAC Mortgage, LLC v. Choengkroy

98 So. 3d 781 (Fla. 4th DCA 2012) · Decided October 17, 2012

SUMMARY

The Florida Fourth District Court of Appeal reversed a sua sponte dismissal of GMAC Mortgage's foreclosure action for lack of standing. The court held that the standing issue required an evidentiary hearing and that dismissing the action without notice and an opportunity to be heard violated due process. It remanded for further proceedings.

CASE DETAILS

COURT	District Court of Appeal of Florida, Fourth District
WRITING FOR THE COURT	Gross, J.; Polen, J.; Conner, J.
JURISDICTION	Florida
DECIDED	October 17, 2012
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	GMAC Mortgage, LLC appealed a final order dismissing its mortgage foreclosure action for lack of standing.
STANDARD OF REVIEW	De novo review applies to a final order dismissing a cause of action for lack of standing.
PRECEDENTIAL VALUE	Published opinion; precedential
PARTIES	GMAC Mortgage, LLC v. Choengkroy

TOPICS

foreclosure · mortgages · standing · appellate procedure · civil procedure

PRACTICE AREAS

Mortgage foreclosure · Civil procedure · Appellate procedure

QUESTIONS PRESENTED

1. Whether the trial court erred by dismissing the foreclosure action for lack of standing without an evidentiary hearing.

2. Whether a plaintiff in a mortgage foreclosure action may establish standing through an equitable transfer of the mortgage occurring before the complaint was filed, even when the formal assignment was executed afterward.
3. Whether the trial court violated due process by sua sponte dismissing the action based on an affirmative defense that was not raised by proper pleadings and without notice and an opportunity to be heard.

HOLDINGS

1. A mortgage foreclosure plaintiff may establish standing through evidence of an equitable transfer of the mortgage before filing, even if the formal assignment was executed after the complaint was filed.
2. When the record contains evidence indicating that an equitable transfer may have conferred standing before filing, the trial court must resolve the issue through an evidentiary hearing rather than dismissing the action summarily.
3. A trial judge may not sua sponte dismiss an action based on an affirmative defense that was not raised by proper pleadings without providing notice and an opportunity for the parties to be heard.

KEY QUOTATIONS

> *"Thus, where there is an indication that equitable transfer of the mortgage occurred prior to the assignment, dismissal of the complaint is error, even if the assignment was executed after the complaint was filed."* (782)

> *"A trial judge may not sua sponte dismiss an action based on affirmative defenses not raised by proper pleadings"* (782)

FACTUAL BACKGROUND

GMAC Mortgage, LLC brought a mortgage foreclosure action against defendants as the assignee of a mortgage and attached the mortgage and promissory note to its amended complaint. The defendants did not respond, and the clerk entered a default after GMAC moved for default; GMAC subsequently moved for summary judgment without opposition. The trial judge sua sponte dismissed the action for lack of standing because the mortgage assignment was executed after the complaint was filed, although the record contained evidence potentially showing an equitable transfer before filing.

PROCEDURAL HISTORY

GMAC filed a mortgage foreclosure action as assignee of the mortgage and attached copies of the mortgage and promissory note. The defendants failed to respond, the clerk entered a default, and GMAC moved for summary judgment. The trial judge sua sponte dismissed the action for lack of standing without conducting a hearing, concluding that GMAC did not own the mortgage when the complaint was filed. The Fourth District Court of Appeal reversed and remanded.

DISPOSITION

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reversed_and_remanded
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REMAND INSTRUCTIONS

Remanded for further proceedings, including an evidentiary hearing to resolve whether an equitable transfer conferred standing before the complaint was filed.

CASES CITED

- Wheeler v. Powers, 972 So. 2d 285, 288 (Fla. 5th DCA 2008)
- Putnam County Environmental Council, Inc. v. Board of County Commissioners of Putnam County, 757 So. 2d 590 (Fla. 5th DCA 2000)
- McLean v. JP Morgan Chase Bank National Association, 79 So. 3d 170, 173 (Fla. 4th DCA 2012)
- Lizio v. McCullom, 36 So. 3d 927, 929 (Fla. 4th DCA 2010)
- Verizzo v. Bank of New York, 28 So. 3d 976, 978 (Fla. 2d DCA 2010)
- Philogene v. ABN Amro Mortgage Group, Inc., 948 So. 2d 45, 46 (Fla. 4th DCA 2006)
- Johns v. Gillian, 184 So. 140, 143 (Fla. 1938)
- WM Specialty Mortgage, LLC v. Salomon, 874 So. 2d 680, 682-83 (Fla. 4th DCA 2004)
- National City Bank v. Nagel, 95 So. 3d 458, 459 (Fla. 4th DCA 2012)
- Liton Lighting v. Platinum Television Group, Inc., 2 So. 3d 366, 367 (Fla. 4th DCA 2008)

OPINION

GROSS, J.

GROSS, J. GMAC Mortgage, LLC, the plaintiff in a mortgage foreclosure action, timely appeals a final order by the trial judge dismissing its suit against the defendants for lack of standing. We reverse because the trial judge erred in dismissing the lawsuit without a hearing and in violation of due process principles.

As the assignee of a mortgage, GMAC brought a mortgage foreclosure suit against the defendants. GMAC's amended complaint contained copies of the mortgage and promissory note. The defendants failed to file a response and the clerk entered a default upon GMAC's motion. GMAC moved for summary judgment.

The defendants did not respond. The trial judge sua sponte entered a final order dismissing the action for lack of standing on the grounds that "the mortgage was not assigned until after th[e] action was filed on March 22, 2010." In the final order, the trial judge found that "when th[e] action was filed the Mortgage was not owned by [GMAC] and [GMAC] lacked standing to file the complaint." The review of a final order dismissing a cause of action for lack of standing is de novo.

Wheeler v. Powers, 972 So.2d 285, 288 (Fla. 5th DCA 2008) (citing Putnam Cnty. Envtl. Council, Inc. v. Bd. of Cnty. Comm'rs of Putnam Cnty., 757 So.2d 590 (Fla. 5th DCA 2000)). In a mortgage foreclosure proceeding, the party seeking foreclosure must demonstrate that it had standing to foreclose at the time it filed the complaint. McLean v. JP Morgan Chase Bank Nat'l Ass'n, 79 *782So.3d 170, 173 (Fla.

4th DCA 2012). To have standing, "[t]he party seeking foreclosure must present evidence that it owns and holds the note and mortgage in question in order to proceed with a foreclosure action." Lizio v. McCullom, 36 So.3d 927, 929 (Fla. 4th DCA 2010) (citing Verizzo v. Bank of N.Y., 28 So.3d 976, 978 (Fla. 2d DCA 2010); Philogene v. ABN Amro Mortg. Group Inc., 948 So.2d 45, 46 (Fla.

4th DCA 2006)). In this regard, a plaintiff may also establish standing by presenting evidence which shows "either an assignment or an equitable transfer of the mortgage prior to the filing of the complaint." McLean, 79 So.3d at 173 (emphasis added). Even if the assignment of the mortgage does not occur until after the plaintiff files the complaint, the "mere delivery of a note and mortgage, with intention to pass the title, upon a proper consideration, will vest the equitable interest in the person to whom it is so delivered." Id. at 173 (quoting Johns v. Gillian, 134 Fla. 575, 184 So.

140, 143 (1938)). "Thus, where there is an indication that equitable transfer of the mortgage occurred prior to the assignment, dismissal of the complaint is error, even if the assignment was executed after the complaint was filed." Id. at 173 (emphasis added).

In this case, there was evidence indicating an equitable transfer prior to the filing of the complaint conferred standing on GMAC to bring suit. Resolution of the issue required an evidentiary hearing. See WM Specialty Mortg., LLC v. Salomon, 874 So.2d 680, 682-83 (Fla. 4th DCA 2004). Also, "[a] trial judge may not sua sponte dismiss an action based on affirmative defenses not raised by proper pleadings" as a dismissal under these circumstances "denies the parties due process because the claim is being dismissed without 'notice and an opportunity for the parties and counsel to be heard.' " Nat'l City Bank v. Nagel, 95 So.3d 458, 459 (Fla.

4th DCA 2012) (quoting Liton Lighting v. Platinum Television Grp., Inc., 2 So.3d 366, 367 (Fla. 4th DCA 2008)). Reversed and remanded for further proceedings. POLEN and CONNER, JJ., concur.